



**"A Voice for Salmon"**  
*365 Days a Year*

September 10, 2020

Heather Casillas  
U.S. Bureau of Reclamation  
BDP-300, 801 I Street, Suite 140  
Sacramento, CA 95814  
Sent via e-mail – [hcasillas@usbr.gov](mailto:hcasillas@usbr.gov)

**Re: Comments on CVPIA Restoration Fund Accounting Guidelines and Policy**

Dear Ms. Casillas:

On behalf of the entire California salmon fishing community, including commercial and recreational fishers, party boat skippers, restaurants, equipment manufacturers, retailers and tribal interests, the Golden State Salmon Association submits the following comments on the Bureau of Reclamation's (BOR) proposed revisions to the 1993 Interim Guidelines regarding CVPIA accounting requirements, as well as revisions to the 2003 Guidelines for CVPIA Program Accounting and Cost Recovery. New guidance would be provided by new Business Practice Guidelines for CVPIA Receipts, Program Accounting, Cost Allocation and Cost.

**Summary and Request for Additional Analysis:** With these changes, BOR is proposing sweeping changes to the CVPIA Restoration Fund (RF). Those changes would, in turn, result in significant changes to CVPIA implementation, as well as to other programs that are supported by the RF. As outlined below, the proposed changes would have far-reaching impacts, many of which BOR has not analyzed. We urge BOR to undertake the additional analysis requested below, to continue to engage with our groups and other stakeholders, and to provide the public with an additional comment period. That would necessarily require a delay in the finalization of these changes. Given that the ongoing litigation with power users remains unresolved, BOR is under no time pressure to finalize its current proposal.

**Achieving the CVPIA's Targeted Level of Fund:** The RF has not achieved the CVPIA's congressionally mandated level of funding in recent years. The proposed changes will significantly worsen this situation. We request that BOR prepare an analysis of the anticipated level of funding for the RF, in comparison with the congressionally mandated target. That target - \$50 million per year indexed for inflation - is in excess of \$90 million today. In addition, given that this would be a long-term reduction in funding, this analysis should present this shortfall in cumulative terms. We also request that BOR begin discussions with stakeholders regarding options to increase RF funding levels. One such avenue would be for BOR to ensure that future CVP water contracts include realistic

contract quantities. This is desirable for several reasons, including benefits for the RF. Specifically, realistic contract quantities would be more likely to trigger the CVPIA's price reforms – in the form of tiered pricing. In addition to incentivizing efficiency, this would increase collections for the RF. Likewise, BOR should revisit its approach to ability-to-pay waivers. (We understand that BOR has not completed required five year review of existing waivers.) In addition to advancing taxpayer repayment, a more rigorous approach to ability-to-pay waivers could increase contributions to the RF. We urge BOR to explore fully these and other avenues to achieve the level of funding included in the CVPIA.

**Impacts of a Reduced Restoration Fund:** The dramatic reduction in the RF proposed by these changes would not simply delay implementation of a few projects. This reduction of the RF by \$10 million per year – or more – would likely eliminate funding for some projects and dramatically affect BOR's ability to achieve the CVPIA's restoration requirements. BOR staff have mentioned some of these impacts in broad terms. However, we request that BOR prepared a careful analysis of the impacts of the proposed changes on CVPIA programs and on mandated restoration actions. For example, BOR has failed to double anadromous fish, as called for by the CVPIA. How would the proposed changes affect that program and activities under CVPIA 3406(b)? How would these changes affect the CVPIA's level 4 program? BOR must analyze these impacts before finalizing the proposed changes. Finally, BOR should evaluate how these proposed decisions regarding the RF could affect its ability to implement the recommendations of the 2008 Listen to the River independent expert panel evaluation of the implementation of the CVPIA's fisheries program.<sup>1</sup>

**Increased Year to Year Variability:** In addition to reducing average levels of funding, the proposed changes would result in dramatic year-to-year variability in collections for the RF. For example, early in extended droughts, collections from water contractors would be significantly reduced. Two years after these reductions in water collections, the proposed changes would result in a dramatic reduction in power collections. This boom and bust approach would result in dramatic reductions in the RF in extended dry periods. This year-to-year variability could reduce the RF to levels that could create an additional threat to CVPIA implementation. We request that BOR prepare an analysis of anticipated impacts to the RF during extended dry periods, as well as an analysis of the impacts of this variability and BOR's plans to manage the RF during extended dry periods,

Other hydrologic scenarios would result in variability of different kinds. For example, a wet year would increase water user contributions to the RF. That would, in turn, create a higher baseline for power users two years later. However, if, that initial wet year were followed by two back-to-back critically dry years, subsequent power sector collections, based on the initial wet year, would be spread over reduced CVP power generation. That variability might be of concern to power contractors. We request that BOR analyze this scenario, as well as others, and prepare an analysis of how this highly variable RF could be managed and how CVPIA programs would be affected.

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<sup>1</sup> [https://www.usbr.gov/mp/cvpia/docs\\_reports/indep\\_review/FisheriesReport12\\_12\\_08.pdf](https://www.usbr.gov/mp/cvpia/docs_reports/indep_review/FisheriesReport12_12_08.pdf)

**Ten-Year Rolling Average for Power Contributions:** The current proposal would base power contributions to the RF on contributions from CVP water contractors two years prior. As discussed above, this would result in a highly variable RF that could significantly harm CVPIA implementation. We request that BOR consider basing power contributions to the RF on a 10-year rolling average of water contributions. The CVPIA itself requires BOR to consider 10-year rolling averages in allocating water and power RF contributions (Sec. 3407(d)(2)(A)). The methodology we recommend would not change total contributions from the power sector over the long-term. However, it would create a far more stable RF, which could benefit CVPIA implementation, the environment and the California fishing industry. It would also provide a greater level of certainty and reduced year-to-year variability for CVP power contractors.

**Reclassifying Reimbursable Programs as Partially Non-Reimbursable.** For several reasons, our organizations oppose BOR's proposal to reclassify a portion of costs related to AFRP, Trinity River and Refuge Level 2 as non-reimbursable. First, BOR proposes to treat as non-reimbursable a portion of CVPIA activities that are clearly required to be reimbursable. Second, without justification, BOR proposes to use a different approach to reimbursability for other CVPIA activities where specific cost allocations are included in the law. And finally, BOR clearly has discretion under the law to interpret reimbursability requirements differently. The interpretations BOR has chosen appear to maximize impacts to the RF and to further erode BOR's ability to implement the CVPIA. We believe that BOR must revisit these proposals to evaluate alternative approaches to reimbursability that would be more compatible with the CVPIA's mandated actions and goals.

**Reimbursability of ESA Biological Opinion and Trinity River Implementation Costs:** We urge BOR to continue to implement the requirements of the ESA and the Trinity River restoration program, but to treat these expenses as O and M expenses reimbursable under authorities other than the CVPIA RF. BOR clearly has the authority to treat implementation of these requirements as reimbursable expenses under authorities (e.g. the Bay Delta Fund and Water and Related Resources.) In fact, the CVPIA clearly treats Trinity River expenses as reimbursable (Section 3406(b)(23) and separate from the RF. Our recommended approach would allow these critical activities to continue, while allowing the RF to be stretched farther.

**Using the Current Cost Allocation Report:** BOR has a final cost allocation report. However, BOR also appears to propose revisiting in the near future the cost allocation for the power sector related to RF contributions. We oppose this decision. First, BOR has a final cost allocation report. It should use it, consistent with the CVPIA's requirement in Section 3407(d)(2)(A). Second, BOR staff's explanation for this decision – to evaluate recent power related maintenance investments – is unconvincing. Recent power related CVP investments, presumably, will either increase power related benefits or make those benefits more reliable. It is, therefore, entirely appropriate that power sector contributions to the RF reflect those investments. The CVPIA does not give BOR the authority to create a new and different approach to cost allocations and proportionality that would apply only to the RF. Finally, BOR's current recommended approach could further reduce RF collections.

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Thus, this approach is doubly inconsistent with the law. First, the CVPIA instructs BOR to use its traditional cost allocation approach. And second, BOR's proposed violation of this approach would undermine the CVPIA's goal for total RF levels and undermine then law's programs.

**Ability-to-Pay Waivers and the Power Sector's Share:** We oppose the use of any ability-to-pay waivers to reduce the power sector's share of RF contributions. The CVPIA clearly supports our position. For example, in its discussion of ability-to-pay issues, the CVPIA states that mitigation and restoration payments by CVP water and power users shall be based upon "water and power users' respective allocations for repayment" (Sec. 3407(d)(2)(A), emphasis added.) Those allocations of RF contributions, clearly, are determined separately from BOR's decision to issue, or not issue, ability-to-pay waivers.

**BOR's Proposal is Incomplete:** As discussed above, BOR proposes to make further cost allocation decisions following the finalization of its current proposal for RF accounting and cost allocations. In addition, BOR has not yet finalized the CVPIA "true up" process. In addition, BOR has not completed related analysis discussed above. Thus, BOR's proposal for managing the RF is incomplete. The current BOR approach represents a piecemeal approach to resolving RF funding issues. This piecemeal approach could result in multiple decisions that could reduce the size of the RF. BOR must prepare a complete and comprehensive proposal and accurately evaluate its impacts.

**BOR Must Conduct an Environmental Analysis of these Discretionary Decisions:** BOR's proposed decisions extend far beyond the issues in the currently unresolved litigation with CVP power contractors. BOR's currently recommended approach is inconsistent with the approach in the 2001 PEIR for CVPIA implementation. For example, that PEIR anticipated collections equal to the full indexed RF provided for under the Act. BOR's discretionary proposals are inconsistent with this approach and would undermine BOR's ability to implement the CVPIA's programs. BOR's proposed decisions require a new analysis under NEPA.

Finally, our groups support and incorporate by reference the comments of the Grassland Water District dated Sept. 4.

Thank you for considering our comments. Please let us know if you have any additional questions.

Sincerely,



John McManus  
President

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